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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's	)	GEN Docket No. 90-314
Rules To Establish New Personal	)	
Communications Services	)	

REPLY

GTE Service Corporation ("GTE"), on behalf of its affiliated domestic telephone, equipment, and cellular service companies, respectfully submits this Reply to Oppositions to the Petitions for Reconsideration of the Second Report and Order in the above-captioned proceeding. As discussed herein, reconsideration and clarification of that Order should be granted to the extent sought in GTE's Petition and Comments.

I. SUMMARY

GTE's earlier filings demonstrated that the Commission should eliminate unnecessary constraints on cellular participation in the PCS marketplace by revisiting the eligibility restriction and, at a minimum, adopting a 20 percent "effective POP" benchmark. In addition, GTE documented the need to clarify that compliance with any eligibility limitations can occur prior to initiation of PCS service and that Section 1071 tax certificates will be granted to companies that divest cellular interests in order to comply with the PCS rules. To maximize flexibility in serving the public, GTE also sought clarification that PCS licensees may subdivide authorizations on a geographic and spectrum basis.

With respect to technical rules, GTE supported broad-based industry proposals to authorize higher PCS power levels and to rely upon industry bodies to set PCS equipment standards. GTE also showed that radio common carriers and their affiliates should be free to provide unlicensed systems and devices consistent with the Spectrum Etiquette and Part 15 rules, and endorsed numerous requests to define PCS service areas generically, rather than using the proprietary Rand McNally maps.

As discussed below, the record provides compelling support for GTE's positions and recommendations. By an overwhelming margin, the commenting parties concur that the current eligibility restriction is overbroad and that additional flexibility in licensing and operating PCS services is warranted. In this Reply, GTE will focus on the eligibility, subdivision, divestiture, and tax certificate issues, and will demonstrate that the limited opposition to GTE's proposals is motivated by a self-serving desire to restrain competition and obtain unjustified marketplace advantages.

II. THE COMMISSION SHOULD GRANT RECONSIDERATION IN SEVERAL IMPORTANT RESPECTS.

A. Cellular Eligibility

The record confirms that fundamental re-examination of the cellular eligibility restriction is both necessary and appropriate. A multitude of parties noted that the restriction is based on unsupported and unrealistic competitive concerns, that cellular carriers can bring experience and expertise to the PCS marketplace and expedite deployment of innovative PCS services, and that other PCS proponents, including IXCs and cable companies, enjoy their own competitive advantages but face no similar

restriction.[1] In addition, GTE and others showed that the restriction falls particularly hard on independent telephone companies, which obtained minority interests in cellular MSAs in response to the Commission's encouragement of market settlements.[2]

In contrast, the arguments proffered by the few parties opposing or seeking to extend the eligibility restriction are self-serving and unpersuasive. For example, MCI and GCI reiterate their entirely indefensible call to ban the nine largest cellular operators from one 30 MHz block nationwide, claiming once again that these cellular carriers enjoy an unfair financial advantage and have no incentive to fully develop wireless services.[3] As GTE and several other parties showed, however, cellular carriers would not pay hundreds of millions of dollars for PCS spectrum only to let it lie fallow, and the build-out requirement preclude such conduct in any event. In addition, cellular carriers have invested billions of dollars in obtaining licenses, building businesses, and bringing service to the public. Far from reflecting an unfair advantage,

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1 See, e.g., Bell Atlantic at 10; CTIA at 3; Citizens Utilities at 5-6; GTE at 2-4; McCaw at 6-15; NYNEX at 6-7; PMN, Inc. at 2-5; Sprint at 2-3; TDS at 4-10; USTA at 5.

2 GTE at 3 (citing Petitions of NTCA, OPASTCO, PMN, Sprint).

3 GCI at 9; MCI at 8. PCS Action (at 14) raises similar arguments. Other parties' arguments in support of the eligibility restriction are equally meritless. Cablevision (at 3-4) simply states that the Commission reached the proper balance, without attempting to respond to the tremendous record evidence to the contrary. CIS (at 4-7) conjures up a multitude of ways in which LECs purportedly could disadvantage independent cellular carriers, and based solely on such speculation, seeks imposition of a series of anticompetitive and unjustified restrictions on LEC PCS and cellular operations. Finally, George E. Murray (at 7-8) states that the eligibility restriction should be relaxed only for carriers that enter strategic alliances with designated entities. There is no basis, however, for limiting the benefits of unrestricted cellular participation in PCS to such contexts.

this commitment confirms that cellular carriers possess a wealth of experience and expertise that would greatly benefit PCS consumers.[4]

Against this background, the Commission should allow cellular carriers, like all other PCS providers, to obtain up to 40 MHz of PCS spectrum in each market. If it is unwilling to take this step, however, it must at a minimum adopt the 20 percent effective POP benchmark advocated in GTE's Petition.[5] This minor adjustment to the eligibility restriction would eliminate serious inequities and enhance the ability of cellular carriers to bring their expertise to the PCS marketplace, without creating any conceivable risk to competition.[6]

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4 See GTE at 4-8; Bell Atlantic at 11 n.28; CTIA at 3-10; McCaw at 18-21; Sprint at 1-4; TDS at 12-13.

5 The only specific opposition to use of an effective POP standard, coming from MCI and GCI, is without merit. Notably, MCI does not dispute GTE's showing that the effective POP test would advance the Commission's PCS policy goals. Rather, it simply asserts — erroneously — that the Commission already has rejected GTE's request. MCI at 10. This is simply not true, since the Second Report and Order nowhere discusses the APC proposal on which GTE's request is based. GCI claims, without explanation, that the effective POP test "would amount to no effective restriction in many cases." GCI at 11. As GTE explained in its Petition, however, the effective POP test is fully consistent with the current PCS ownership policies, and in fact was first suggested by a leading PCS proponent.

6 If the Commission does not modify or eliminate the restriction, it must, consistent with Section 332 of the Communications Act, extend it to ESMRs. Nextel's Opposition, which is intended to oppose eligibility restrictions for ESMRs, in fact shows that if such restrictions are necessary for cellular (which they are not), they are even more necessary for ESMRs. Nextel (at 2) reveals that it holds licenses in top U.S. markets covering a population of over 100 million — far greater than any individual cellular carrier — and will shortly introduce digital, cellular-equivalent services while its cellular competitors must still transition from analog systems. Clearly, Nextel cannot be given unfettered access to 40 MHz of PCS spectrum if its principal competitors are limited to 10 MHz in-region.

B. Subdivision of Spectrum

In its Comments, GTE agreed with numerous Petitioners that allowing licensees to subdivide their spectrum on a geographic and bandwidth basis would expedite the introduction of new services, promote participation in PCS by additional entities, and create incentives for the development of innovative offerings.[7] Other commenters echoed this assessment. Advanced MobileComm Technologies, for example, notes that subdivision would permit licensees to respond rapidly to market conditions.[8] Similarly, CTIA points out that subdivision will enhance spectrum efficiency, and McCaw states that it will encourage participation by designated entities and speed the initiation of service.[9]

In contrast, MCI and GCI contend that subdivision of PCS spectrum would cause "excessive splintering," lead to incompatible systems, and allow licensees to evade the build-out requirements.[10] These arguments have no merit. The marketplace will ensure that PCS licensees use the flexibility of subdivision to meet consumer needs. Quite simply, no company would pay money to obtain subdivided PCS spectrum if technical or operational limitations would preclude it from providing adequate service. In addition, the Commission can ensure that the build-out requirements are met by

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[7] GTE at 9-10.

[8] Advanced MobileComm Technologies at 6.

[9] CTIA at 16; McCaw at 22-24. See also Citizens Utilities at 11-12 (supports subdivision as long as rules promote universal deployment of PCS); Telocator at 6-7.

[10] MCI at 3-4; GCI at 15. Nextel (at 13) also contends that subdivision "would inject additional variables into the initial auction process and complicate the development of an orderly aftermarket." It fails to explain why such results would occur, however, and makes no effort to rebut showings that subdivision would yield tangible benefits.

applying them to each entity operating pursuant to the master licensee's authority. This safeguard should assure that rural areas receive PCS service sooner than they would if a single entity had to meet the build-out requirements for an entire license area.[11]

C. Divestiture of Cellular Interests

Several parties support GTE's recommendation that carriers be permitted to bid for PCS licenses as long as they come into compliance with any eligibility restriction prior to initiating PCS service.[12] These commenters point out that such an approach would maximize participation in PCS, avoid "fire sales," preserve cellular valuations, and be fully consistent with Commission precedent.

The only real opposition to GTE's proposal comes from GCI. Once again seeking to impede competition by cellular carriers, GCI contends that allowing post-award divestiture of cellular interests would delay the implementation of PCS and allow carriers to lock up spectrum for five years.[13] This argument is plainly unrealistic. Cellular carriers, like all PCS providers, will have powerful incentives to initiate service as soon as possible in order to begin realizing a return on their bids.

D. Tax Certificates

In its Petition and Comments, GTE demonstrated that carriers that divest cellular interests in order to participate broadly in the PCS marketplace are eligible for tax

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[11] See McCaw at 23 & n.49.

[12] See Bell Atlantic at 12 n.32; CTIA at 14-15; McCaw at 17. In addition, Cablevision (at 7-8) supports a six-month post-award period to divest cellular interests. Six months is not long enough, however, to assure the orderly disposition of properties. If many cellular carriers win PCS licenses, a six-month period would not avoid the "fire sale" problem or minimize the adverse impact on valuation of cellular systems.

[13] GCI at 12; see also Cablevision at 7.

certificates under well-established Commission policies. GTE pointed out that such carriers obtained many of their cellular interests in furtherance of Commission-encouraged settlements, that the Commission has recognized that cellular carriers will bring valuable expertise and experience to PCS, and that achieving broad cellular participation will require divestiture of cellular interests in-region if the eligibility restriction is not modified or eliminated.[14] GTE's request for tax certificate authority was supported by Bell Atlantic and CTIA.[15]

Cablevision, in contrast, opposes granting tax certificates to carriers divesting cellular interests. It characterizes tax certificates as a "subsidy" and asserts that precedent does not support their use because the divestitures would be voluntary.[16] Cablevision's opposition rests on a fundamental misreading of the Telocator decision and grossly underestimates the constraints imposed by the eligibility restriction on cellular participation in PCS.

As an initial matter, tax certificates are not a subsidy. The principle goal of Section 1071 tax certificates is to facilitate the promotion of a competitive environment. When cellular licensees agreed to settle for minority interests in order to further the Commission's cellular objectives, they based their decision on certain assumptions regarding the future structure of the mobile services industry. With the advent of ESMRs and new PCS services, those assumptions have shifted profoundly. If cellular

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[14] GTE Petition at 8-11; GTE Comments at 8-9.

[15] Bell Atlantic at 12 n.32; CTIA at 15.

[16] Cablevision at 10-13. GCI (at 12-13) also opposes tax certificates, on the mistaken ground that the PCS rules afford cellular carriers "ample opportunity" to participate without divesting cellular interests. The rules in fact sharply limit cellular participation in PCS in-region without divesting, and tax certificates consequently are necessary to advance the Commission's policy goal of allowing cellular carriers to bring their expertise to the PCS marketplace.

carriers now are forced to bear substantial tax liabilities as a condition for participating actively in the mobile industry of the future, they would be severely penalized for their good-faith compliance with and reliance on the Commission's cellular licensing policies. Tax certificates consequently are a means of avoiding an inequity and preserving the integrity of the Commission's licensing policies.

Second, contrary to Cablevision's analysis, the Telocator decision plainly states that voluntary divestitures will be eligible for tax certificates as long as there is a "substantial and immediate causal connection between the sale or exchange and the relevant new or modified policy."[17] As GTE detailed in its Petition, such a connection undeniably exists. If cellular carriers are to participate to any significant extent in PCS in-region — where their expertise and experience will create the greatest public benefit — they must divest cellular interests in order to comply with the new PCS rules and policies. However, if the current eligibility rule remains in place, cellular carriers will have little opportunity to provide PCS in-region, even with 10 MHz of PCS spectrum and the authority to use their existing cellular spectrum for PCS.[18] Consequently, tax certificates are plainly necessary and appropriate to advance the Commission's new PCS policies.

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[17] Telocator Network of America, 58 R.R.2d 1443, 1446 (1985). Indeed, contrary to Cablevision's contention, the Telocator decision explicitly holds that voluntary transactions may qualify even if they do not involve an existing interest that becomes inconsistent with new or changed FCC policies. See id. at 1445; Cablevision at 12 (quoting from the decision at 1444 but ignoring the analysis on the next page).

[18] See CTIA at 6-7 (noting that in many markets, "cellular systems are operating at or near capacity with penetration rates of only 3%" and that continuing obligations to serve analog subscribers prevent immediate implementation of digital services and decrease the effective capacity cellular carriers may devote to PCS.).

III. CONCLUSION

The Commission should reconsider and clarify the Second Report and Order as requested herein and in GTE's Petition and Comments. Such modifications to the PCS policies will clearly serve the public interest.

Respectfully submitted,

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January 13, 1994

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Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Reply" have been mailed by first class United States mail, postage prepaid, on the 13th day of January, 1994 to all parties of record.

Ann D. Berkowitz